IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

TUESDAY, THE 6TH FEBRUARY 2007 / 17TH MAGHA 1928

WP(C).No. 33534 of 2006(P)

PETITIONER:

T.A.USHA,
THOTTUNGAL PARAMBU, KANDAKADAVU,
ANDIKADAVU P.O., KOCHI-8.

BY ADV. SRI.P.P.JACOB
SRI.N.T.SATHYAVAN

RESPONDENTS:

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1. PERUMPILLY CO-OPERATIVE SOCIETY,
PERUMPILLY, NJARAKKAL, ERNAKULAM,
REP. BY ITS SECRETARY.

2. LALAN,
VALIYATHARAVEEDU, MALIPPURAM, ERNAKULAM.

3. THE JOINT REGISTRAR OF CO-OPERATIVE
SOCIETIES (G), ERNAKULAM.

4. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT, CO-OPERATION @
DEPARTMENT, ERNAKULAM.

BY ADV. SRI.M.M.MONAYE FOR R1
SRI.M.PAUL VARGHESE
SRI.M.S.BREEZ
GOVERNMENT PLEADER SRI.P.K. RAVIKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1- TRUE PHOTOCOPY OF THE NOTICE ISSUED BY 4TH RESPONDENT TO THE PETITIONER DATED 14.3.2005

EXT.P2- TRUE PHOTOCOPY OF THE ORDER VIDE NO.G.O.(Rt) 166/2006/CO-OP. ISSUED BY 4TH RESPONDENT DATED 29.3.2006

RESPONDENT'S EXHIBITS

EXT.R1(a)- TRUE COPY OF THE AUDIT REPORT DATED 27.9.2004 AND THE BALANCE SHEET FOR 2002-03

EXT.R1(b)- TRUE COPY OF THE AUDIT REPORT DATED 31.12.2004 AND THE BALANCE SHEET FOR 2003-04

EXT.R1(c)- TRUE COPY OF THE AUDIT REPORT DATED 28.2.2006 AND THE BALANCE SHEET FOR 2004-05

EXT.R1(d)- TRUE COPY OF THE SAID RESOLUTION DATED 9.11.2006 OF THE BOARD OF DIRECTORS

(TRUE COPY)

P.A TO JUDGE

J.M.JAMES, J.

W.P.(C). 33534/2006 (P)

Dated this the 6th day of February, 2007

JUDGMENT

The writ petitioner had undergone the selection process and topped the select list, prepared and published by the first respondent, Perumpilly Co-operative Society, Njarakkal, Eranakulam. Notification was issued on 4.6.2003. Though the rank list was prepared on 14.11.2003, the writ petitioner had not so far been appointed. The Joint Registrar (General), Ernakulam, had directed the first respondent, Society, to cancel the rank list, on the ground of alleged irregularities in conducting the selection.

2. Writ Petition No.24821/2004 was filed before this Court, challenging the non-appointment of the writ petitioner. As an appeal would lie against the order of the Joint Registrar, this Court did not interfere and directed the writ petitioner to approach the Government. Accordingly, an appeal had been preferred and the

Government, after hearing all concerned, passed G.O. (Rt)No.166/2006/Co-op dated 29.3.2006, allowed the appeal and set aside the order of the Joint Registrar, cancelling the rank list. The resolution, passed by the first respondent, cancelling the rank list, consequent on the order of the Joint Registrar, was also set aside. The first respondent, Society, was also directed to make the appointments from the rank list published on 14.11.2003. Despite such an order, the appointment of the petitioner had not been effected. Hence, this writ petition.

3. During the hearing, the learned counsel for the first respondent, Society, relying on **Chandran v. State of Kerala (1994 (1) KLT, Short Note.Case No.26, Page 27)** submitted that "even if the posts are permanent, it is not obligatory for the board of directors of a Society to fill up all the posts". The counsel further submits that the financial position of the Society is very unstable and, therefore, no further appointments are required to be made. The counsel further relied on **Jatinder Kumar and Others v. State of Punjab**

(AIR 1984 Supreme Court 1850), to emphasis the point that the process of the selection and selection for the purpose of recruitment against the anticipated vacancies does not create a right to be appointed to the posts, for which the selection was held.

4. The learned counsel for the writ petitioner, on the other hand, submits that the Government had already ordered to appoint the petitioner to the post of attender and the order of the Government is still valid. The said order had not so far been challenged. The writ petitioner is a woman aged about 33. The stand of the first respondent, Society, that the appointment shall be only after the financial position of the Society increases, may not be accepted, the counsel submit.

5. An examination of the facts in Chandran v. State of Kerala, reveal that the learned single Judge was dealing with the appointment of the persons from the feeder category to the promotion post. It was laid down after discussing the facts that "it is an absolute prerogative right of the board of directors not to fill up

any particular post even though the feeder category rules had sanctioned the post of a Secretary and enable the board of directors to effect appointment to that post."

6. The facts available in the case of Chandran v. State of Kerala cited supra, are on different context. The same cannot be applied to the facts of the case at hand. In Jatinder Kumar v. State of Punjab, cited supra, on the other hand, the Court observed that "if the vacancy is to be filled up, the Government has to make appointment strictly adhering to the order of merit as recommended by the Public Service Commission. It cannot disturb the order of merit according to its own sweet will except for other good reasons viz., bad conduct or character. The Government also cannot appoint a person whose name does not appear in the list. But it is open to the Government to decide how many appointments will be made." It was in the facts of that case, the apex Court observed that the "process for selection and selection for the purpose of recruitment against anticipated vacancies does not create a right to

be appointed to that post". In the present circumstances, the facts available in Jatinder Kumar's case is entirely different. Therefore, the authorities cited are inapplicable to the facts that are under discussion.

7. After hearing both sides and considering the law and facts that are placed before me, I direct the first respondent, Society, to appoint the writ petitioner as an attender, in the Society, in accordance with the G.O. dated 29.3.2006, referred above. The appointments shall be effected within 45 days from the date of receipt/production of a copy of this judgment.

The writ petition is allowed as above.

J.M.JAMES
JUDGE

mrcs